

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2005011

Variance

Hearing Date:

May 11, 2005

Agenda Item:

17

Supervisory District:

3

Applicant:

J. David Camp of Tuscany Homes

Property Owner:

Robert C. Meger and John Knudsen

Request:

Variances to permit:

- 1) Proposed lot coverage of 20.5% where 15% is the maximum allowed,
- 2) A proposed single-family residence to setback 20.2 feet from the side (west) property line where 30 feet is the minimum required,
- 3) A proposed single-family residence to setback 21.8 feet from the side (east) property line where 30 feet is the minimum required; and
- 4) An existing hillside area disturbance of 74% where 15% hillside area disturbance is the maximum allowed.

These variances are requested from the following Zoning Ordinance Section(s):

- 1) Section 503, Article 503.5.4
- 2) Section 503, Article 503.4.2
- 3) Section 503, Article 503.4.2
- 4) Section 1201, Article 1201.6.1.1

Site Location:

4201 E. Lakeside Lane, Lot 126 – Lincoln Drive & Tatum Boulevard (Paradise Valley area)

Site Size:

37,278 square feet (0.87 acres)

Existing Zoning:

Rural-43

Current Use: Vacant

Citizen

Support/Opposition: An e-mail from the Community Development Department of Paradise Valley was written in support of the variance request. A (1) letter of support from the Clearwater Hills Improvement Association was received. Three (3) letters of opposition had been received at the time this report was written.

Staff

Recommendation: Deny

Existing On-Site and Surrounding Zoning:

1. On-site: Rural-43
North: Rural-43
South: Rural-43
East: Rural-43
West: Rural-43

Existing On-Site and Surrounding Land Use:

2. On-site: Vacant
North: Lakeside Lane then, single-family residence
South: Single-family residence
East: Single-family residence
West: Single-family residence

Background:

3. **September 7, 1955:** A final plat (**S-462**) was recorded for the Clearwater Hills subdivision. The subject site is located within this development.
4. **c. 1966:** A single-family residence was constructed on the subject property. (Permits were obtained but records are not available.)
5. **c. 2001:** A demolition permit was issued to demolish said residence.
6. **October 29, 2004:** The subject property was transferred to the current property owners via a warranty deed recorded under docket number **041275074**.
7. **December 20, 2004:** The applicant applied for building permits **B200414803** to construct a fence on the subject property, **B200414802** to construct a single family residence and **B200414804** to construct a pool on the subject property.

8. **February 7, 2005:** The applicant applied for this variance request.
9. **February 18, 2005:** The applicant applied for Legal Non Conformance (LNC) status for previous hillside disturbance.
10. **March 21, 2005:** The property was granted Legal Non-Conforming (LNC) status per **LU20050005** for the previous hillside disturbance and a substandard lot area.

Findings:

11. **Maricopa County Department of Transportation:** No response at the time this report was written.
12. **Flood Control District:** No objection to this variance request (see attached memo).
13. **Environmental Services Department:** No objection to this variance request (see attached memo).

Site Analysis:

14. The subject property is located north of Lincoln Drive and west of Tatum Boulevard, in the Clearwater Hills subdivision. The subject site is Lot 126 of the Clearwater Hills (unit one) subdivision and is zoned Rural-43. The subject site is accessed from Lakeside Lane along the northern property line. Entry to the property is to the west of the proposed residence. The subject site is fairly square shaped, measuring approximately 202 feet in width and 186 feet in depth. The site, according to Assessor records, is approximately 37,278-square feet in area and is substandard for this zoning district; however, legal, non-conforming status was established for this site under LU20050005.
15. Previously there was a single-family residence on the property, constructed in 1966. This residence and the other structures on the site were demolished in 2001 by a previous owner, the site was graded and a larger pad area was created. There are hillside considerations that could hinder development of the site. The Zoning Ordinance requires engineered site plans to establish the pre-existing hillside disturbance prior to the demolition of the original residence. The primary focus of this variance request is the proposed 7,651 square foot, single family residence which does not meet the minimum side yard setbacks, exceeds maximum lot coverage and the maximum hillside disturbance allowed in the Rural-43 zoning district.
16. At this time the subject site is vacant. There are some scattered trees remaining on the site and the original driveway is still present in addition to the new driveway. The majority of the site was originally hillside with slopes in excess of 15%. Construction of the original residence in the late 1960s disturbed much of this hillside. This disturbance was later granted legal, non-conforming status; however, additional disturbance of the

remaining hillside areas has occurred since the adoption of the hillside development guidelines in 1983. Though the disturbed area is comparatively small, it accounts for a large portion of the remaining hillside areas.

17. The southern most portion of the site still remains natural with respect to grade and vegetation. The site is "stair-stepped" in elevation, decreasing in height from south to north. The northern 3/4 of the site is where the majority of the disturbance has occurred. There is a difference of opinion between staff and the applicant regarding the amount of hillside disturbance on this site. The applicant states that the existing disturbance has not been increased whereas staff is taking a more conservative approach and is considering several areas as increased disturbance due to the demolition of the previous residence.
18. The following tables are included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 Zoning District	Proposed Standard
Front Yard Setback	40-feet	63'-8"
Rear Yard Setback	40-feet	40-feet
Side Yard Setback (west)	30-feet	20.2 feet
Side Yard Setback (east)	30-feet	21.8-feet
Maximum Height	30-feet/2-stories	21-feet/1-story
Minimum Lot Area	43,560 square feet	**37,278 square feet
Minimum Lot Width	145-feet	198-feet
Lot Coverage	15%	20.5%
Hillside Disturbance	15%	74%

* Standards indicated in **bold** do not meet minimum base zoning standards.

** LNC status

Proposed Hillside Disturbance Table	(Sq. Ft.)	
Gross area of lot	37,278	A
Area of lot that is hillside	37,278	B
Additional area of lot that has been previously disturbed	23,486	C
Area of hillside on lot proposed to be disturbed	10,160	D
Area of hillside in seven foot band around building perimeters	0	E
Area of hillside on lot that is disturbed for septic tanks and leach fields	0	F
Net hillside area graded (D-E-F)	10,160	G
Percent of hillside area graded (G/B)	74%	H



Aerial view of subject site

Land Use Analysis:

19. The subject site is located west of Tatum Boulevard and north of Lincoln Drive in the Paradise Valley area, in the Clearwater Hills subdivision. Clearwater Hills is a Class 1a County Island bordered by the Town of Paradise Valley to the north, south and east, and by the City of Phoenix to the west. The Phoenix Mountain Preserve abuts the north and west boundaries of Clearwater Hills. Residential subdivisions of similar character, under the jurisdiction of the Town of Paradise Valley, border the south and east sides of Clearwater Hills.
20. Clearwater Hills is a gated community comprised of two units, the original subdivision Clearwater Hills within which the subject site is located, and Clearwater Hills Unit Two. Clearwater Hills Unit Two is adjacent to the southern and western boundaries of the original subdivision. The Clearwater Hills subdivision was recorded in 1955. Clearwater Hills Unit Two subdivision was recorded in 1959. Practically all of the lots in Clearwater Hills (unit one) are considered hillside lots, and all of the lots in Clearwater Hills Unit

Two are considered hillside. The subject site is located in the southeastern portion of Clearwater Hills (unit one). The subdivision consists of large lots with luxury homes. Historically, numerous variances have been heard due to the unusual lot configurations and hillside conditions that exist on many of the lots within Clearwater Hills. Many properties within this subdivision were granted legal, non-conforming (LNC) status for hillside disturbance, lot area and lot width; and variances granted in this neighborhood are consistent with the LNC character of the various properties.

21. Historically, the Board of Adjustment has heard numerous cases in the Clearwater Hills subdivision. Staff research found five relevant cases within the subdivision, summarized as follows:

- Case **BA89-208** was for variances to permit: 1) a graded area of a lot in a hillside area of 34% (18,380-sq. ft.) where 15% (8,120-sq. ft.) is the maximum allowed in the Rural-43 zoning district, 2) hillside area driveway cut to fill ratio to exceed $1/3^{\text{rd}}$ of the cross-sectional width of the driveway, 3) a driveway width of 27 feet within a hillside area where maximum width of paved portion of driveway permitted is 14 feet, and 4) to allow parking space back-up distance of 14 feet where 24 feet is the minimum required. The Board approved these requests. The property address is 7334 Clearwater Parkway.
- Case **BA2002065** was for variances to permit: 1) a proposed hillside disturbance of 33.8% where 15% is the maximum allowed in the Rural-43 zoning district, 2) a proposed retaining wall height of 25.8 feet where 18 feet is the maximum allowed, 3) a proposed average retaining wall height of 14.22 feet where 11 feet is the maximum allowed, 4) a proposed building height of 53'-10-3/4" where 30 feet is the maximum allowed, 5) a proposed combined driveway cut slope of 42 feet where 12 feet is the maximum combined cut slope allowed, 6) a proposed 33 foot high cut slope adjacent to a garage area where 18 feet is the maximum allowed, 7) a proposed driveway width of 16 feet where 14 feet is the maximum driveway width allowed, 8) a proposed average driveway cut slope of 13.84 feet where 8 feet is the maximum average allowed, and 9) a proposed driveway to be constructed on 100% fill where 33.3% is the maximum amount of fill allowed. The Board approved these requests. The property address is 7309 N. Highcliff Drive.
- Case **BA2004125** was for variances to permit: 1) a proposed hillside disturbance of 40.13% where 15% is the maximum allowed in the Rural-43 zoning district, 2) a proposed driveway width of 30 feet where 14 feet is the maximum allowed, 3) a proposed driveway constructed on 100% fill material where $1/3$ (33%) fill material is the maximum allowed, and 4) a proposed retaining wall height of 13'-3" where 3 feet is the maximum allowed. The Board approved these requests. The property address is 4002 E. Canyon Court.

- Case **BA2005007** is for variances to permit: 1) a proposed single-family residence to setback 20 feet from the front (east) property line where 40 feet is the minimum required, and 2) a proposed hillside area disturbance of 35% where 15% is the maximum allowed in the Rural-43 zoning district. The Board heard this case April 13, 2005 and it has been continued to the May 11, 2005 hearing. The property address is 7024 N. Longlook Road.
- Case **BA2005018** are requests for variances to permit: 1) a existing single-family residence to setback 1 foot from the rear (west) property line where 40 feet is the minimum required, and 2) an existing building separation distance (single-family residence/studio) of 12.29 feet where 15 feet is the minimum required in the Rural-43 zoning district. The Board heard this case April 13, 2005 and it has been continued to the May 11, 2005 hearing date. The property address is 7302 N. Red Ledge Drive.

Plan Analysis:

22. This case is to permit a proposed lot coverage of 20.5% where 15% is the maximum allowed, a proposed single-family residence to setback 20.2 feet from the side (west) property line where 30 feet is the minimum required, a proposed single-family residence to setback 21.8 feet from the side (east) property line where 30 feet is the minimum required, and a proposed hillside disturbance of 74% where 15% is the maximum allowed the Rural-43 zoning district.
23. This first variance request is to permit proposed lot coverage of 20.5% where 15% is the maximum allowed. The applicant is proposing to construct a 5,192 square foot single-family residence, a 960 square foot attached garage, a 589 square foot attached guest room with its own 400 square foot patio and an 870 square foot patio at the rear of the residence. The total area under roof for the residence will be 7,651-square feet. If the applicant builds this dwelling, the proposed lot coverage will be 20.5% of the site thus removing the possibility of future additions to the residence or accessory structures without requesting further variances.
24. This proposed residence will exceed the maximum lot coverage by 3,727.8-square feet or (5.5%). While this seems excessive it should be noted that the existing site is substandard in lot area. If this lot were one acre in area as is required in the Rural-43 zoning district, then the proposed lot coverage would be 17.6%; still above the 15% maximum lot coverage requirement, but much less than the requested 20.5%. Staff cannot support the variance as requested; however, staff would support a modified request that would be more in line with typical zoning requirements. In other words, staff recognizes the substandard lot issue as a hardship, but feels that reduced lot coverage would be more appropriate for this site to lessen the impact of the proposed residence on neighboring properties. A 17.5% lot coverage on the subject site would equate to 15% on a typical one-acre lot. This would allow the construction of a 6,534-square foot residence on the subject site.

25. The second variance request is for a proposed single family residence to setback 20.2 feet from the side (west) property line where 30 feet is the minimum required. As mentioned earlier, the existing lot is substandard with regards to area; however, it is substantially wider due to its square configuration. The minimum lot width in the Rural-43 zoning district is 145 feet. The subject site is almost 200 feet in width. It would appear that there is adequate room to locate a large single-family residence within the site's building envelope. While the R1-35 zoning district allows 20 foot side setbacks, the Rural-43 zoning district requires a minimum of 30 feet to preserve open space and a rural feel. Some variances have been issued in Clearwater Hills due to narrow lots, unusual topography and a desire to have single-story homes to preserve the view.
26. Staff is of the opinion that there are alternatives available for this variance request. The first would be to move the proposed guest room, which is the westernmost portion of the proposed residence, east 7.7 feet, and attach it to the west side of the main portion of the proposed residence. This alternative would place the entire structure approximately 28 feet from the west property line, much more in line with zoning requirements for this district. Another alternative would be to incorporate a smaller structure into the west side of the proposed residence which would meet the required 30 foot setback. The third alternative would be to simply eliminate the proposed guest room structure. Staff is of the opinion that this variance request is self-created. There are no physical hardships present due to the configuration of the lot or topographical hardships regarding this particular request. The western portion of the residence can be brought very close to or within compliance if these suggested alternatives are followed. Granting this request would confer a special privilege to the applicant. For these reasons staff is recommending denial of variance request two.
27. The third variance request is for a proposed single-family residence to setback 21.8 feet from the side (east) property line where 30 feet is the minimum required. As with the second request, staff has reservations regarding this request. Staff can suggest two alternatives. First, redesign the residence where it meets the required 30 foot setback. The second alternative would be purchase the necessary property from an abutting property owner. Either alternative would eliminate the need for this request without the need to increase the height of the building or violate the setbacks.
28. Staff believes that the need for this variance is self-created. There are no unusual circumstances or hardships relating to this request. The lot, though substandard, is wide enough to accommodate a large residence. Granting this request may confer a special privilege to the applicant not enjoyed by others and set a negative precedent for future development. For these reasons staff is recommending denial of variance request four.

29. The fourth variance request is for a proposed hillside disturbance of 74% where 15% is the maximum allowed in the Rural-43 zoning district. This request came about when the Plan Review division noted the excessive hillside disturbance during the review of the building permit for the residence. The total area for the project will be 7,651-square feet. As of the writing of this report the applicant has provided information indicating approximately 74% disturbance of the remaining hillside area.
30. Staff believes that the majority of this disturbance may have occurred during the demolition of the previous residence. Staff found evidence that some fill had been pushed over the side of the existing pad area. This had the effect of increasing the pad area slightly and creating additional hillside disturbance. It should be kept in mind that only a portion of the original hillside remained due to the original development of the site and this significantly drives up the percentage of disturbance.
31. There is some confusion regarding the hillside disturbance for the subject site. The applicant maintains that much of this area was disturbed previously when the original residence was constructed. Aerial photographs are inconclusive in this regard and staff is unable to determine what disturbance was pre-existing and what was new. Staff is being conservative and stating that the entire disturbance is "new". If new evidence is produced to indicate that this is not the case, staff will gladly reconsider the disturbance percentages. At this time, staff recommends denial of this request but would value the Board's input regarding this specific request.
32. While staff is recommending denial of these requests it should be noted that the existing lot is considered to be substandard in area which creates a physical hardship. Also, the applicant enjoys the support of the Clearwater Hills Homeowners Association as they typically approve of increased lot coverage to reduce building height. There is also some confusion as to the amount of hillside disturbance on this site due to lack of records and inconclusive aerial photography of the site. All of these factors should have some bearing on the Boards decision regarding these requests.

Recommendation: (BA 2005011)

33. Staff recommends **denial** of these variance requests based on the following:
- The requests conflict with the intent of the Zoning Ordinance.
 - The requests are self created and do not fit within the context of an unusual circumstance.
 - The requests would confer a special privilege to the applicant.
 - There are alternatives available to the applicant.
34. If the Board finds that a reasonable use of the property can be made without this variance, then this request may be approved subject to the following stipulations:
- a) General compliance with the site plan dated received March 17, 2005.

- b) The applicant shall obtain building permits within 120 days of Board approval.
- c) The applicant shall correct the site plan in accordance with the letter from the Plan Review Division, dated May 2, 2005, and provide revised copies to staff, within 60 days of Board approval.

ers/clh

Attachments: Case Map BA 2005011
Zoning Map
Assessor Map
Site Plan
Floor Plans (2 pages)
Elevations
Application
Supplemental Questionnaire
MCPlan Review Letter (3 pages)
MCESD memorandum
MCFCD memorandum
LNC memorandum (2 pages)
Town of Paradise Valley email of support
Letter of support (Clearwater Hills Improvement Association)
Letters of opposition (3 pages)